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1. Privacy from a Historical Perspective

Sjoerd Keulen & Ronald Kroeze

1.1 Introduction

Privacy has never been a major topic for historians. After the first publication of a study on the concept of privacy in colonial history in 1972, it took another 44 years before David Vincent published the first monograph on the history of privacy. However, over the last twenty years privacy has received more attention of historians, especially in an attempt to historicize growing concerns about modern surveillance techniques. This has indeed provided new insights into contemporary challenges as well as the history of privacy, for example that privacy has had different meanings and as an ideal came into existence under specific historical circumstances. Moreover, over the last 30 years concerns of privacy and privacy regulations have influenced the profession of historians.

Here it is important to stress that historians have their own research methods. They focus on continuity and change over time and pay ample attention to the context in which certain ideas and practices have developed.¹ The historical discipline's main concern is therefore to understand the past on its own terms. The methodology historians use assumes that the past can only be made accessible through source criticism, the interpretation of sources and literature, and the construction of a historical narrative. Historical narratives may change when new sources are discovered, old sources are restudied with the help of new (digital) methods or when a new generation of historians asks new questions about the past informed by contemporary challenges.² This explains why historians make a distinction between the past as such and historical narratives about the past. The latter, the history of history writing, is called historiography. Studying the historiographical trends in general and the historiography of the topic under scrutiny more precisely, is essential for historians. It provides insight into how historians have dealt with the past, the methods they have used, and the different interpretations of the same past that can (co)exist and the debates this variety has caused among historians.³ Understanding and

1 Tosh 2010; Lorenz 2006.

2 Ankersmit 1985, 15; Ankersmit 2001.

3 Iggers 1997.

accepting these aspects is what might be called 'historical awareness', as the historiographer and methods historian John Tosh has stressed. It also includes being sceptical towards nostalgia (the past was better) and progress (the present and future are better than the past) as well as anachronism ('the unthinking assumption that people in the past behaved and thought as we do', as Tosh puts it).⁴

We are inclined to this understanding of history writing and offer a historical interpretation of privacy in this chapter. We touch upon some of the most important topics in Western(-European) history and historiography when it comes to the history of privacy. Other historians using a different geographical scope or other sources and methods may want to stress different developments.

In this chapter, we first look at the history of privacy by using a long-term perspective and by focusing on the broader context. Thereafter we discuss several classic texts, which provide a good entrance to understanding the turning points in the history of privacy. These classic texts can be viewed as essential sources for understanding various past meanings of privacy. In the third section we introduce the historiography of privacy. Here we discuss the main texts of historians on privacy as well as the different historical methods and historical schools and how they have contributed to different (and sometimes conflicting) understandings of privacy in history. As privacy is not only an object of study, we will discuss the challenges privacy holds for the (future) profession of historians in the fifth section. We will finish with some concluding remarks.

1.2 The meaning and function of privacy

Privacy is not a clear-cut concept. Neither today, nor in history. As present-day dictionaries, such as the Merriam-Webster or Oxford Dictionary, already show, privacy can be defined as freedom from unauthorized intrusion or one's right to privacy, but also as (a place of) seclusion, secrecy, a private matter, and the state of being free from public attention. But as history shows, these interpretations have not always been around and were developed in specific historical circumstances. In this chapter we give a historical overview of how privacy has been understood throughout history. By using a long-term perspective and focusing on the broader context we illustrate that the concept of privacy was never fixed, and that the discussions and

4 Tosh 2010.

discourses on privacy reflect the larger societal changes. We use the most common periodization in Western-European historiography. As we illustrate, the history of privacy can be traced back to Ancient Times but the rise of more modern and contemporary interpretations of privacy have been related to the premodern period (ca. 1500-1789) which includes the Renaissance, the Reformation, and the Enlightenment. The third period deals with The Long 19th Century, the era from the French Revolution until the First World War (1789-1914). The fourth period covers more or less the Short Twentieth Century (1914-1991), which includes two World Wars and the Cold War, and its aftermath. However, we also made an intervention in the periodization. Because the latest changes of privacy are very much influenced by the historical impact of new information technology we divided the twentieth century in a pre- and a post computer age, the latter starting in the 1970s.⁵ To illustrate that the borders of the periodizations for privacy are not as strict as in for example political periodizations, we used round numbers.

As subthemes in every historical period we touch upon the most emergent changes in those time periods. Those changes come mostly in the form of discussions and anxieties about sociopolitical and technological change. These changes have similarities but also differ for every period, which is one of the explanations that the concept of privacy was both characterized by recurrent features and debates as well as by fluidity in time. We do not focus on the judicial and legal aspects of privacy which are covered in the legal chapter of this handbook.

1.2.1 Until 1500: Privacy before the Middle Ages

Scholars have traced the history of privacy back to ancient civilizations. The sociologist of totalitarian regimes Barrington Moore wrote a social and cultural history of privacy in the ancient world. He emphasized that ‘totalitarian’ regimes throughout history have been trying to control their subjects’ lives by either denying them privacy or through surveillance. Moore, for example, looked at the Chinese Qin dynasty (221-206 BC) and the Indian Maruya Empire (322-187 BC), and stressed how they were unsuccessful in controlling privacy as they lacked modern equipment like phone tapping or CCTV for surveillance.⁶

⁵ As an introduction: Jordheim 2012.

⁶ Moore 1984.

Aristotle (384-322 BC) is another common starting point for a historical review of privacy.⁷ Many scholars of privacy consider the distinction Aristotle made between the private domestic sphere of the family, the *oikos*, and the public sphere of politics and political activity, the *polis*, as the first classical reference to the existence of a distinctive private domain. Both Aristotle's *Politics* and *Ethics* cover these subjects. The political philosopher Hannah Arendt (1906-1975) made this distinction famous when she argued that this split also separated the world of women and children (*oikos*) from that of men (*polis*), and that this distinction has continued to exist into the modern era.⁸ By using these references, historical reviews of privacy, suggest that in over 2200 years of history privacy was mainly understood in the same way.

Several historians have stressed that this view on privacy as an unchanged concept is problematic as can be illustrated by the example of the Greek *oikos* and *polis*. From historical research we know that the *oikos* differed much from our modern nuclear family house(hold) aimed at consumption. The ancient household was foremost a place for production, a farm, a catering of a much larger family (and their slaves), through which the *oikos* as a group – and not the individuals that made up the *oikos* – had access to the *polis*. The *oikos* was the place where traditions of the *polis* were taught, making the *oikos* a political phenomenon. The role of women was also more complex. Religion was pivotal in the *polis* and women played a central, sometimes even decisive, role in religious ceremonies and festivals. This makes the (political) influence of women in the *polis* considerable.⁹ Since the organization of society was made out of groups and people who foremost identified themselves as a group member, there was only a limited notion of individuality if we use a contemporary Western perspective. This makes a research that starts from the idealized modern notion of privacy as an aspired and equal individual right historically problematic.

1.2.2 Privacy from the Renaissance till the French Revolution (ca.1500-1800)

1.2.2.1 *The importance of a middling sector*

Amongst historians the position now commonly held, is that, in the words of Harvard historian Jill Lepore, 'the history of privacy is bounded; privacy, as an aspiration, didn't really exist before the rise of individualism, and it

7 For example: DeCew 2018.

8 Arendt 1998.

9 Nagle 2006.

got good and going only with the emergence of a middle class'.¹⁰ Privacy as a concept is essentially linked to the emergence of individualism and a middling sector in society that had both the time to take up intellectual labour and – unlike the rulers and the lower strata of society – the liberty to choose their own living space.¹¹

We can see the emergence of such a middling group in the period of the Renaissance and the Reformation (c. 1450-1650). Merchants, scholars, and clergy had the luxury and time to reflect and to write to fellow souls about their inner feelings. After the invention of the printing press (c. 1440) books and letters were quickly dispersed throughout Europe. When private letters are compared to public outlets, one sees how individuals created a distinction between the private and the public persona. This is typical for the Renaissance. For example, by analysing the work of Thomas More (1478-1538) Renaissance scholar Stephen Greenblatt shows how More purposely draws a 'calculated distance between his public persona and his inner self. (...) His whole identity depended upon the existence of a private retreat'. More also built such a retreat in a literal sense, in the form of his house. His inner feelings and needs sharply contrasted with More's most famous work, the ironic *Utopia*. In this antonym work the private (*privatus*) is identified as the root to all social injustice and the prime hindrance to the public interest. The urge for retreat is a characteristic of the time of Renaissance, which can be seen both in monastic and in civic life. With priests seeking voluntary periods of seclusion. 'As the public, civic world made increasing claims on men's lives, so, correspondingly, men turned themselves, sought privacy, withdrew for privileged moments from urban pressures'. This was one of the driving forces that generated individuality, which is one of the key characteristics of the Renaissance.¹²

The diary became a place of definition and management of the self and thus a place of privacy. According to historian Philippe Ariès, England at the end of the fifteenth century was 'the birthplace of privacy', since diaries were widely kept there. Private letters, diaries, and autobiographies, but also closets and the study got popular.¹³ However, privacy was not a clear positive thing for contemporaries. The linguist and cultural historian Cecile Jagodzinski shows that privacy in the days and works of Shakespeare (1564-1616) was mainly discussed in a negative manner. In plays like *Love's*

¹⁰ Lepore 2007.

¹¹ Webb 2007.

¹² Greenblatt 2005, 45, 46.

¹³ Phillipe Ariès 2003, 5.

Labours Lost or *The Tempest* privacy is portrayed as negative. Solitude and the contemplative private are treated as suspicious. They are the 'instigators of vice and political conspiracy' which are trying to create chaos, and disrupt the stability of the natural state in which kings have the divine right to rule.¹⁴

1.2.2.2 *An emerging individuality*

An emerging individuality had a profound effect on society. The Reformation (1517-1648) can be viewed as a struggle between collective readership by a traditional church authority and hierarchy of the Catholic Church versus the authority of the individual believer and his interpretations of private reading of the scripture. Jagodzinski shows how the concept of privacy changed in the seventeenth century in a context of rising popularity of reading. The number of printed books increased, as well as their circulation. Readers started to acquire 'a new sense of personal autonomy, a new consciousness of the self'. This helped to shape the concept of privacy to become a personal right and the core of individuality. According to Jagodzinski, continuing religious struggles in post-Reformation England 'eventually ratified the right to individual autonomy in all things (including the religion); and that the catalyst for these changes lay in the practice of private spiritual reading'. This was not a revolutionary process but a steadily evolving one.¹⁵ *Two Treatises of Government* (1690) of the protoliberal and philosopher John Locke (1632-1704) are symbolic for this new understanding of privacy as personal autonomy and individuality. In his contract theory he argues that cooperation in and stability of a political society is the result of the legitimate aim of rational individuals to protect their private life, liberty, and property.¹⁶

Changes in the understanding of privacy also changed family life and housing. In his book on the history of childhood Phillipe Ariès proposes that the formation of the modern nuclear family was a result of 'a desire for privacy and also a craving for identity: the members of the family were united by feeling, habit and their way of life'.¹⁷ This was very much a middle-class affair, both the higher and the lower classes still lived in larger groups. In the eighteenth century 'the family began to hold society at a distance, to push it back beyond a steadily extending zone of private life'. The layout of houses began to change to accommodate the urge for privacy, most strikingly by the introduction of a corridor on which rooms opened. Rooms also got

¹⁴ Jagodzinski 1999, 1-25.

¹⁵ Jagodzinski 1999, 1-25.

¹⁶ Locke 1988.

¹⁷ Ariès 1962, 413.

distinct functions and beds that used to be all over the house ended up exclusively in a bedroom. Servants were kept at more distance by installing bells, while the introduction of the first post services were used for making appointments to visit – instead of just dropping by. ‘The rearrangement of the house and the reform of manners left more room for private life; and this was taken up by a family reduced to parents and children, a family from which servants, clients and friends were excluded’, as Ariès states.¹⁸

In his book *The Secret History of Domesticity* the cultural scholar Michael McKeon shows how the modern notion of the public-private relation emerged in the seventeenth and eighteenth centuries in England. He describes this development throughout the whole private-public spectrum. At the private side of the spectrum this is visible in developments like the privatization of the family and marriage. McKeon also stresses the political impact of this development which becomes apparent at the ‘public extreme’ in the rise of contractual thinking, the devolution of absolutism and the shaping of a civil society separated from the state.¹⁹

The rise of a public sphere in the eighteenth century also had an impact on privacy. In Georgian England (1714-1830), printing was deregulated which led to a spectacular rise in periodicals and newspapers. The establishment of the private persona became the fundament of citizenship. Those elements were combined in the increasing fascination of newspapers, biographers, and gossipers for the individual. Those stories circulated in a larger public sphere of coffeehouses, clubs, pubs, and playhouses. The effects of this shift were clearly visible in how a new class of entertainment professionals, the eighteenth-century London ‘celebrities’, protected their good reputation and their private feelings. As the cultural historian Stella Tillyard famously wrote: ‘Celebrity was born at the moment private life became a tradable public commodity’.²⁰ For the ‘celebrity’ stage workers, for those who lived in and from their life in the public eye, controlling their self-representation became very important.²¹ This relationship between privacy and new communication technology (newspapers), which became apparent in eighteenth century London, took off in a spectacular way after 1800 and influenced the whole of society. From 1800 onwards, the relationship between privacy and technology thickens and becomes a recurrent theme in history.²²

18 Ariès 1962, 398, 399.

19 McKeon 2007.

20 Tillyard 2005, 64.

21 Fawcett 2016, 1-22.

22 Lepore 2013.

1.2.3 Privacy in an age of modern urbanization, communication, and state-formation (ca. 1800-1900)

1.2.3.1 *Privacy threatened, privacy as an ideal?*

It has been argued that after 1800 two interpretations of privacy emerged, that have kept their relevance until today. First, this period gave birth to the modern 'surveillance state' and the concept of the 'all-seeing eye' which threatened privacy and will eventually lead to privacy's death.²³ In the late 1780s, Jeremy Bentham developed the idea of the panopticon, a (prison) design with guards watching everything without prisoners/ citizens knowing when and how. The panopticon is often taken as the starting point of this modern rationale.²⁴

This metaphor can only be understood against the background of an emerging second interpretation: privacy as an ideal and aspiration for every citizen. Legal historians have stressed that the democratic revolutions of around 1800 played an important role in the shaping of this ideal. The American Revolution was a defence against the right of not being insulted by the government. The Bill of Rights (1791) explicitly stated the 'right of people to be secure in their persons, houses, papers, and effects'.²⁵ The French Revolution gave birth to the Universal Declaration on the Rights of Man in 1789. Georges Duby, in volume IV of *A History of the Private Life*, claims that 'the nineteenth century was the golden age of private life, a time when the vocabulary and reality of private life took shape'.²⁶ David Vincent in *Privacy. A Short History* also stresses the importance of the rise of the modern household: the members of the household were free and secure, behind the front door they could read their books and have intimate relationships without interference, here modern privacy could flourish.²⁷

1.2.3.2 *Crowded places and new technologies*

The rise of two paradoxical views on privacy were a result of the same developments. First, they were a reaction to extreme population growth which raised the question how to control society as well as maintain individual space. When we take the British example we clearly see the opportunities and challenges. The British population doubled between 1801

23 Froomkin 2000, 1463.

24 Vincent 2016, 53.

25 Solove 2006, 4, 5.

26 Ariès, Duby and Veyne 1987.

27 Vincent 2016, 63.

and 1851, and had doubled again by 1911, a process that went hand in hand with urbanization: up to 80% lived in a city around 1900. As cities grew, they became places of strangers in which it was impossible to know every person, street, or event. Gaslights were introduced in cities (in London in 1807) to create more visibility and safety for individuals in the night. Traffic rules were drafted to separate pedestrians from horses and, later, from cars, and social rules developed how to keep physical distance in crowded places such as train cabins. Separating people and their different tasks, became central in Victorian housing design. 'The family must have privacy', one could read in books on planning. Study, living, kitchen, and dining room were separated, servants and family were not expected to share rooms and gardens were fenced to offer privacy, seclusion, and intimacy. Of course, only the middle and higher echelons of society could afford a house that met these conditions but privacy became the ideal for all.²⁸

Secondly new (communication) technology had its impact.²⁹ Written correspondence was not new, but new was the well-organized postal system that became increasingly reliable, easy, and cheap. In the nineteenth century low standard prices were introduced and postmen stopped in every town. Together with state investments in schools, the number of people in Western Europe that could write and read, and send letters, increased dramatically. Innovations such as the telegraph and telephone offered extra communication possibilities.³⁰ Journalism flourished in the nineteenth century and in the final quarter of this century, what has been called *New Journalism* developed: the emergence of the 'modern' committed, well-informed, and respectable journalist who wrote columns or tried to find out what 'really' happened. But New Journalism also refers to the emergence of American-style *boulevardism* or mass media newspapers focusing on gossip, scandal, and celebrity life.³¹ Issues of immorality such as political corruption or 'unnatural' sexual affairs (adultery, homosexuality) were covered. Royals turned to the law to prevent privacy insults. A much-cited ruling of Prince Albert v. Strange in 1849 prevented that stolen etchings of Prince Albert were published. A main argument for the decision was that there existed 'the abstraction of one attribute of property, which was often its most valuable quality, namely, privacy'.³² In a mediatized society, privacy literally became

28 Vincent 2016, 54-61.

29 Lepore 2013.

30 Van der Woud 2013; Henkin 2007; Wenzlhuemer 2015.

31 Wijfjes and Voerman 2009; Wijfjes 2004.

32 Mitchell and Mitchell 2012.

valuable. There are many examples of nineteenth-century elite men and royals that in return for money prevented publications of their 'lapses'. In the Netherlands king William II (1840-1849) was blackmailed for supposed homosexual relationships, sums of money and lucrative positions prevented his enemies from publication.³³ Especially the fear of losing their honour and reputation made people willing to pay. Newly drafted formal-legal rules on adultery, homosexuality, and divorce – another breeding ground for scandal – could quite easily turn someone's private affairs into newsworthy public stories.

1.2.3.3 *Modern information collecting techniques*

Changes of the state and how it was governed had an impact on privacy as well. The emerging modern bureaucratic nation-state was clearly represented by the establishment of post offices and the postman in the street, who worked on schedule and followed standardized procedures.³⁴ The postal system connected the nation and its inhabitants and was, together with the security forces like the police and the army, a clear representative of the modern state. But the modern state was a paradoxical thing when it comes to privacy. On the one hand the government took measures to protect privacy, on the other hand it infringed further in private life through data collection. For example, it actively engaged in the prohibition of certain stories or in forcing newspapers to destroy complete issues when the privacy of high-placed persons was threatened. At the same time the government structurally collected more and more information. The Census and the collecting of Government Records were 'threats' to privacy in the nineteenth century according to privacy law professor Daniel Solove. In the US the number of questions asked during the census dramatically increased from only four in 1790 to 142 in 1860.³⁵ In England the General Register Office collected and archived information on marriage and childbirth since 1801 but officials steadily collected more sensitive information on economic status, languages spoken, and illnesses for 'security' reasons.³⁶

Not surprisingly, in such a context privacy scandals could emerge. Such as the one in 1844, when it became known that with permission of sir James Graham, Secretary of the Home Department, the post of Italian freedom fighter Giuseppe Mazzini living in exile in London was opened on request

33 Van Zanten 2014. But only for a while, in the end several anecdotes reached out to the public.

34 Bayly 2003.

35 Solove 2006, 6.

36 Levitan 2011.

of the Austrian government. In Parliament Graham denied his actions because state security was not a topic to be discussed publicly. It showed that state security could and would be used as an argument to intrude on privacy.³⁷ Moreover, if and when private correspondence was a matter of public concern was a source of scandal throughout the nineteenth century.³⁸

1.2.3.4 *The paradox of the liberal state*

Although, the nineteenth century is widely regarded as an era of liberalism,³⁹ one sees how liberal reforms such as freedom of opinion in post, speech, and in the press, more room for private entrepreneurship in the media sector and new laws to protect individual rights were in reality both an opportunity as well as a challenge to privacy. On the one hand the liberal emphasis on private space and individual rights that need to be guaranteed by the law and the state was supportive towards the development of privacy as an individual right. On the other hand, even in an era of liberal reform, citizens would only enjoy their privacy when the state granted it to them. As the historian of privacy David Vincent puts it: 'Liberal governmentality derived its authority from a deliberate act of withdrawal from the private sphere'.⁴⁰ In other words, the liberal state gave privacy to its citizens on certain conditions. The emergence of the modern state made people, therefore, rethink their individual privacy and possible threats.

This is clearly visible in the work of the eminent liberal scholar John Stuart Mill (1806-1873) who dedicated much of his work to the dangers of the 'overgrown state' for private individuals. He stressed that in a liberal democracy, the freedom of private individuals should not be limited by a bureaucratic state or other unnecessary forms of state control; interference in one's private life should be only allowed when an individual harms someone else.⁴¹

From important scandals and debates from this period, we can also derive how the emergence of liberal rights in combination with the technological and communication developments we discussed above, informed a new debate about privacy. The struggle to accommodate new communication devices which could expose the private life to ever-larger audiences in often novel ways played a crucial role in these debates. Besides the secret post

37 Vincent 2008.

38 Kroeze 2008.

39 Kahan 2003.

40 Vincent 2016, 75, 76 and 118. Based on Barry, Osborne, and Rose, 1996.

41 Held 2016; Mill 1869.

example of 1844 and the case of Prince Albert vs. Strange (1849), ‘The Right to Privacy’ article of Samuel Warren and Louis Brandeis of 1890 is a crucial text of this period. It was a reaction to the intrusion of *boulevardism* on the private life of the first author, whose daughter’s marriage was without consent covered in the media.⁴² The article was a plea for a ‘right to be let alone’. This challenged the idea that privacy was a relational thing and only to be found in the context of the family and domestic home. In short, the text can be seen as one of the first pleas for private ‘isolation’, for a desire to control personal image and information and for a legal system that would protect these rights, an interpretation that would become dominant in the twentieth century.⁴³

1.2.4 Privacy in an era of international conflict and the emergence of the welfare state (ca. 1900-1970)

1.2.4.1 *Extending individual rights*

Warren and Brandeis contributed to a more radical interpretation of privacy and urged for legal protection but their desire to better protect the private individual fit well a broader development of protecting human rights. In the twentieth century privacy became a more fundamental and international desire, a development which was a reaction to experiences with racism in a colonial context and the atrocities and disrespect for private life and dignity during the Second World War (1939-1945). For those reasons initiatives to strengthen the formal-legal protection of individual rights on the international level were widely supported. The United Nations were founded in 1945 and article 12 of the UN Declaration of Human Rights of 1948 stressed that ‘no one shall be subjected to arbitrary interference with his privacy’. The 1950 European Convention on Human Rights issued that ‘Everyone has the right to respect for his private and family life, his home and his correspondence’.⁴⁴

Still, some other important changes took place on a national scale in relation with the emergence of the welfare state. From the beginning of the twentieth century, in different Western countries, new laws were established that protected vulnerable individuals and their individuality

42 ‘The Right to Be Let Alone’, 1890.

43 Vincent 2016, 77 and 78.

44 UN Declaration of Human Rights, see http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf; European Convention on Human Rights, see https://www.echr.coe.int/Documents/Convention_ENG.pdf. See also Stuurman 2017, Chapter 9 ‘The Age of Human Rights’.

such as children, women, and the elderly.⁴⁵ Acts that promoted children's rights (in England the 1908 Children's Act, the Punishment of Incest Act of 1908 and the Maternity and Child Welfare Act of 1918; internationally also the UN Declaration of the rights of the child 1959/1989 could be mentioned) allowed the state to intervene in family life when the child was neglected.⁴⁶ Women's rights were strengthened as well. Women were more and more recognized as autonomous citizens with an individuality that did not depend on their relationship with a man and on their position in the household. Very important in this respect was the universal right to vote that was established in many countries in the first half of the twentieth century. But it was a long, and still-lasting struggle. Not only did women lack the right to have their own bank account or to work after marriage in countries such as the Netherlands in the 1950s and 1960s, a 'modern' country such as Switzerland established full women's suffrage only in 1971, to name but a few examples.⁴⁷

These changes were clearly related to the welfare state, which cautiously emerged in the years around the First World War (1914-1918) and was embraced by most political groups in the West in the decades after 1945.⁴⁸ Besides laws on women and child rights, the welfare state established new town planning acts and set basic standards for housing (in Great Britain in 1918 and 1919 and in the Netherlands with the Housing Law of 1901 and the Rental Law of 1950). These acts prescribed that new houses, especially in the social housing sector, should have a separate kitchen, an indoor toilet,⁴⁹ and preferably three bedrooms so that parents, sisters, and brothers could sleep in their own room and have their privacy. Housing acts however also contained basic rules about how families were supposed to use their house and under what conditions welfare workers were allowed to intervene. In the 1950s in the Netherlands, public officials who selected farm helpers for the new Noordoost-Polder selected on how housewives made beds and were dressed in unannounced house visits.⁵⁰ So, the welfare state provided a basis for home, security, literacy, income, and health but those collective claims always went hand in hand with the right of the state to interfere.⁵¹

45 Renwick 2017. In Germany this process started even earlier: Grimmer-Solem 2003.

46 Vincent 2016, 80.

47 Adams 2016.

48 Judt 2007; Keulen 2014.

49 Vincent 2016, 81: Large groups – 20-30% – had no fixed bath and no water closet. In 1951 in Manchester 40% of the homes did not have an exclusive use of a bath. Near-universal availability of basic sanitation was achieved after 1975. Across Europe we find comparable figures.

50 Vriend 2014.

51 Young and Willmott 2011; Vincent 2016, 127.

New communication and entertainment technology had, again, another impact on privacy. The telephone, a nineteenth-century invention, displaced the letter as the most important means of communication by 1970. Radio and television were new for the twentieth century and were readily adopted in the new homes. They were consumer products but also created new forms of fear about the harmful effects of too much privacy as authorities became suspicious about the moral impact of the television on private and family life.⁵²

1.2.4.2 *New fears of the surveillance state*

The twentieth century also added another chapter to the fear of the emergence of the surveillance state and its impact on privacy. Although, statistics and surveillance had started in the nineteenth century, as did the debate on the surveillance state, the twentieth century made it more of a reality. Because of the rise of the welfare state, more files of individuals were created and kept. If people wanted social housing, a pension, or unemployment benefits they had to register and apply for support and often had to accept inspection at home to determine both the financial need and the decency and skill set of the prospective recipients. Surveillance, therefore, changed from being controlled and supervised by one's neighbourhood and family to an anonymous and systematic control by the state and social welfare organizations.⁵³ Other forms of registration were introduced as well. Almost nobody used to register for a passport, but from around 1900 a passport was needed to travel abroad and the document became universal.⁵⁴

As part of the surveillance state police, security, and intelligence services advanced as well. Criminal organizations were infiltrated more often by police, and they started to use phone taps. In Britain, in 1957 an inquiry committee chaired by judge Lord Birkett, investigating the tapping of the phone of a barrister of a London gangster, stated:

There is no doubt that the interception of communications, whether by the opening or reading of letters or telegrams, or by listening to and recording telephone conversations, is regarded with general disfavour. (...) [They are] an invasion of privacy and an interference with the liberty of the individual in his right to be 'let alone when lawfully engaged in his own affairs.'⁵⁵

⁵² Vincent 2016, 91, 93, and 94.

⁵³ For Germany: Lutz 2017.

⁵⁴ Bayly 2003.

⁵⁵ As cited in: Vincent 2016, 105

The committee expressed reservations for phone tapping for national security and thought it best to continue these activities and to not be transparent about whom or what was being monitored. In addition, without real parliamentary consultation, security organizations extended their activities in the period around World War Two and during the Cold War. For example, in many Western democracies communists and communist organizations were monitored and spied upon in these decades.⁵⁶

Interestingly enough, at the same time privacy became perceived and presented as a core value of liberal democracy during the Cold War. Famous books like Hannah Arendt's *The Origins of Totalitarianism* of 1951 emphasized how totalitarian governments could only exist because of their destruction of 'the public realm of life' and by the isolation of every individual – it 'destroys private life as well'.⁵⁷ George Orwell illustrated the dangers of an illiberal state in his novel *Nineteen Eighty-Four* of 1949. Here, he presented a world without private life in which the 'Thought Police' controlled everything by permanent surveillance.⁵⁸

1.2.5 Privacy in the computer age (1970-present)

1.2.5.1 *The digitalization of privacy*

The rise of the computer (1960s), Internet (1983), and World Wide Web (1993) in the past few decades has brought the impact of technological change on privacy issues at the centre of public debate. Information gathering and archiving were central for the modern state since the nineteenth century but the introduction of the computer started a whole new debate about data collecting and privacy threats. In 1969, Jerry Rosenberg wrote *The Death of Privacy* in which he argued that computers were in use with complete access to personal data.⁵⁹ Arthur R. Miller wrote in 1971 that computers would create a 'surveillance system that will turn society into a transparent world in which our homes, our finances, and our associations will be bared to a wide range of casual observers'. The growing concerns about state interference can also be derived from the renewed attention for Burke's panopticon concept, for example in Foucault's *Discipline and Punish*.⁶⁰

⁵⁶ Vincent 2008, 116-128; Hooper 1987, 29-31, 104.

⁵⁷ Deborah 2002; Müller 2013.

⁵⁸ Orwell 2008, 165.

⁵⁹ Rosenberg 1969.

⁶⁰ Foucault 1991.

Civil unrest urged politicians to take measures. In the Netherlands and Sweden in the 1970s, civilians protested against the census and the storage of the census data in the new mainframe computers. This led to the introduction of a real Privacy Law in Sweden in 1973, the adoption of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data by the Council of Europe in 1981, and to the first national data protection law in the Netherlands in 1989.⁶¹ In Britain in 1972, the government issued a committee headed by Kenneth Younger to consider legislation on privacy and the United States adopted their Privacy Act in 1974. Attempts to add fluoride to drinking water as a public health measure was annulled by the Dutch High Court in 1973 because the Court thought that such far-reaching measures needed a basis in law.⁶² Thus, interference in private life by the government had been acceptable in the welfare state of the 1950s but no longer in the 1970s when these forms of interference in personal life needed a clear judicial foundation.

But not all contemporaries discussed digitalization as a threat. Some saw it as democratization. The computer would destroy the privacy of the typical bourgeois family and end the privilege of elites to control their private life, property, and information. Thus, in the 1970s privacy was redefined: it was used to emphasize the autonomy of the individual rather than the family and it concentrated on (the end of) information privacy.⁶³

1.2.5.2 *Spread of progressive values?*

What by the 1970s was called progressivism further strengthened the idea of privacy as an individual and legal right. Clearly the 'traditional' marriage went into decline in Western society and single life, living together, and other forms of non-traditional relationships increased providing more options for individuals how to live and where to find their privacy. In recent years the number of single-person households has even risen to a European average of 30% of the population. Widespread availability of new and modern houses accommodated these personal choices. Legal changes, such as those that ended the criminalization of homosexuality or widened the possibility for divorce also had a huge impact on individual opportunities.⁶⁴

61 Vincent 2016, 111 and 112; Overkleeft-Verburg 1995; Council of Europe, *Treaty 108*, 1981. This rise of literature on the end of privacy has continued up until today. See for example, David Holtzman 2006: 'Our privacy is shrinking quicker than the polar ice gap'.

62 Edeler 2009; HR 22-06-1973, NJ 1973, 386 Fluoridering.

63 Vincent 2016, 113-115.

64 Vincent 2016, 118-129, 212.

There are even signs that progressive privacy interpretations have become global aspirations. Western and non-Western ideas about privacy may still differ greatly but have also converged as privacy, at least on paper, has become a global aspired human right. The establishment of the earlier mentioned UN declaration on Human Rights and the European Convention on Human Rights has also supported this change, as well as the fact that the European Court of Human Rights has the right to rule on alleged claims of interference. Same-sex marriage was first introduced in the Netherlands in 2001, by 2018 almost 30 countries in all continents have adopted it.⁶⁵

In sum, although orthodox religious groups and other conservative forces may have never accepted these changes and in some Western countries have retained their influence, in countries where these liberal-progressive values and laws have been established they have remained in place and put constraints on societal and state interference with private lives of citizens.

1.2.5.3 *The impact of 9/11 and anti-terrorism*

In the most recent period, the terrorist attacks of 9/11 in 2001 and the antiterrorism laws that were issued in reaction to it, have made privacy a more complex and disputed issue. In 2007, Julian Assange's Wikileaks revealed documents about the impact of antiterrorism actions, which stirred up emotions on privacy issues. Assange justified his actions with the slogan: 'Privacy for the weak and transparency for the powerful'. According to him we stand at a crossroads because of the rise of '[I]nternet that transfers power over entire populations to an unaccountable complex of spy agencies and their transnational corporate allies'.⁶⁶ In 2013, as a public warning Edward Snowden published classified documents about what the government had been collecting, including private information, under the umbrella of counterterrorism.

Not unlike the era of the Cold War, intelligence agencies are little transparent about their actions, and politicians are hardly asking them to be. The British Intelligence and Security Committee of Parliament's Privacy and Security report of 2015 stated: 'While the Committee has been provided with the exact figures relating the number of authorisations and warrants held by the Agencies, we have agreed that publishing that level of detail would be damaging to national security'. In the Netherlands, the parliamentary subcommittee on intelligence and security issues is even

65 For example the General Data Protection Regulation (GDPR) of the European Union which will be enforced in all the EU member states from 25 May 2018.

66 Assange et al. 2016.

called the secretive committee (commissie Stiekem).⁶⁷ Hence, the main line of defence of different Western governments has been in line with what we have seen throughout history: whenever infiltrations are reported, the government, with support of parliament, neither confirms nor denies accusations, all for the sake of security and with reference to the argument that those who have nothing to hide, will not be harmed.⁶⁸

In recent history, different voices can be heard in the debate on privacy. Edward Snowden is one of the critical voices when it comes to the ‘nothing-to-hide-argument’: ‘Arguing that you don’t care about the right to privacy because you have nothing to hide is no different than saying you don’t care about free speech because you have nothing to say’. He added that individuals do not have to justify the right to be let alone, on the contrary, governments should convincingly explain why they collect personal data in the first place. There is also a growing number of, mainly legal, experts who have analysed the ‘nothing-to-hide argument’ and came to the conclusion that it is a dangerous, ill-convincing, and false representation of how these laws work.⁶⁹ The larger public seems concerned as well. In 2017 in the Netherlands, the Law on the Intelligence and Security Services passed parliament, but a popular comedian launched a successful campaign to rally popular support to hold a referendum in March 2018 on this ‘Big-Data-Trawl Law’ (Sleepwet). The turnout showed that a (small) majority did not support the law, which forced the government to make changes.⁷⁰ The debate is hot-tempered because ‘not only privacy is at stake but above all democracy’, as privacy sociologist Jan Holvast has claimed.⁷¹

On the other hand, there are experts who have nuanced these recent fears. The historian of privacy Vincent has stressed that throughout modern history there has always been a tendency to overestimate the possibilities and techniques, and therefore the dangers, of the surveillance state.⁷² He claims that misreading of the history of privacy contributes to recent fears. And unlike critical voices like to claim, there is no historical evidence that supports the claim that people were more in control of their personal image and private information in the past. The examples of the annoyed Warren or the fear of the London celebrities in the nineteenth century illustrate this. And although social media may have blurred existing lines too and Facebook

67 Versteegh 2017.

68 Vincent 2016, 131.

69 Solove 2011.

70 Lonkhuyzen 2017.

71 Holvast 2009.

72 Vincent 2016, 132-134.

CEO Mark Zuckerberg may claim that privacy is no longer a ‘social norm’,⁷³ face-to-face communication is still highly important and many social media messages only have relevance for a small group of users. Therefore, some scholars have stressed to look at privacy more as a contextual value instead of only an individual and absolute principle. The philosopher of technology Helen Nissenbaum has stressed the importance of ‘contextual integrity’: privacy is about rules and expectations between you and the environment.⁷⁴ Clearly, in the contemporary period these rules and expectations are being reformulated, as they were in the past, and this explains ongoing debates on privacy in society, politics, and science.

1.2.6 Conclusion of the meaning and function of privacy in history

To sum up, from a long-term perspective privacy should not be understood as a linear development from less to an ever more complete set of individual rights. Nor is the context in which privacy has been discussed fixed in time. In addition, privacy in history was not always valued as something very important, nor always as a positive value. Debates about its relevance should be understood against the background of the great changes in history such as the rise of individualism, the Protestant Reformation, liberalism, and the emergence of individual rights, as well as ongoing changes in technology and communication. In the early modern era of the Renaissance and the Reformation privacy became attached to the individual but this was mainly in the context of having a private place in your home for and within the household and family life, for example to read or to pray in seclusion. Literacy and the rise of the printing press, which improved people’s ability to read and communicate, contributed to privacy as an information issue as well. In a world of emerging liberalism and the modern state in the eighteenth and nineteenth century, privacy became more and more associated with protection by the state and the law, also against foreign threats. Paradoxically, the state and its security forces were also viewed as a danger to privacy, especially its interference in personal life or the gathering of personal information. The Second World War and the Cold War contributed to a belief that individual human rights, of which privacy was one, were the essential elements of a modern democracy which required more legal protection, also on the international level. Changes in modern

73 Johnson 2010. Already in 1999 Sun Microsystems CEO Scott McNealy at the introduction claimed: ‘You already have zero privacy. Get over it!’

74 Nissenbaum 2010.

communication techniques, from the printing press and telephone to the computer and Internet, have had a great impact on the way privacy was understood as well. All these changes have made privacy a slippery concept that is difficult to grasp in general terms. Yes, it can be said that privacy is a form of seclusion, a right, and about the protection of private life and personal information, but in what way specifically requires that one delves into the social, political, economic, and international circumstances of the historical period one is interested in. We provided an introduction to these issues in the text above.

1.3 Classic texts and authors

In this section we will turn to four historical sources on privacy which highlight important shifts and developments in the history of privacy. Although in the texts the word 'privacy' was not always used, or not very often, they are about issues that are clearly part of the broader history of privacy. Moreover, the sources provide an entrance to how privacy in a certain period was understood. We chose Thomas More's *Utopia* (1516) because his text highlights the relationship between privacy and the rise of individualism against the background of the Reformation in the Renaissance and early modern era. Thereafter we discuss John Locke's *Second Treatise on Government* (1690) for his text is a clear example of the importance of the rise of liberalism for the acceptance of private individual rights in the seventeenth and eighteenth century. Then we discuss Jeremy Bentham's *Panopticon* (1791), for his text provides a good introduction into modern efforts, and obsessions, to control society and his idea of a panopticon has become a metaphor when it comes to discussions about the surveillance state up until the contemporary era. Finally, we chose Samuel Warren and Louis Brandeis' 'The Right to Privacy' (1890) for this text is a clear example of how in the industrial era individual privacy became defined as the right to be let alone, worthy of protection by law. The text can also be read as a clear example of individual's reactions to the growing modern communication techniques and growing role of the media on private life in the nineteenth century.

1.3.1 Thomas More, *Utopia* (1516)

Thomas More (1478-1535) was a leading Renaissance humanist. He was a chancellor to the English king Henry VIII but against the Reformation and

opposed to the views of his patron to split the Church of England from the Catholic Church of Rome. More corresponded with many fellow humanists, such as Erasmus of Rotterdam. From his correspondence, we know that More purposely tried to shield his private life off from his public persona. This combination makes More a symbol for the emerging idea of individuality that needs privacy, which is one of the key characteristics of the Renaissance era. His views on privacy are clearly visible in More's most famous work: the novel *Utopia* from 1511. It was More who coined the term utopia. Historian Quentin Skinner has argued that More wrote *Utopia* as an ironic satire to prove that a perfect society could not exist without private property. This interpretation is now widely accepted but is an idea that started to emerge in this period. In *Utopia* More sketches a just society in the form of the Island Utopia. On this island there is no private property, but also, or therefore, no privacy. Privacy in Utopia is not viewed as a freedom; on the contrary, privacy is viewed as highly suspicious.⁷⁵ To keep its inhabitants in view full, in order to make sure that they behave well, there are no private spaces. Utopians eat in public halls and do not have a private home. The citizens rotate between the houses every year and the houses do not have a lock. Even the individual body is not private. In Utopia it is custom to make the private parts public to the partner before marriage.⁷⁶

Thomas More wrote the book in Latin. More smartly used the Latin rendering of his name, Morus, which is similar to the Greek word for fool. He used this as a device to distance his personal self from the views in the text, while at the same time making it clear that the island Utopia is not real. Thus, the text shows how Renaissance thinkers created a distance and a distinction between their public persona and the inner self which is symbolic for the emergence of individualism in society. Secondly, because Utopia is an antonym, the ironic function helps to get a clear picture on the Renaissance thoughts on privacy. The book remains influential until today. For example, it ranks as text number 51 in the collection of one million curricula of English-language colleges and universities, while libraries over the world today hold over 700 different forms and (language) editions of this text, outranking by far any other text with utopia in its title.⁷⁷

⁷⁵ Skinner 1987.

⁷⁶ More 1985.

⁷⁷ Search in the Open Syllabus Project, via: <http://explorer.opensyllabusproject.org/>, worldcat.org.

1.3.2 John Locke, Second Treatise on Government (1690)

John Locke (1632-1704) is a founder of liberalism and a philosopher who is famous for his social contract theory. Locke published his *Second Treatise* anonymously in 1690 as part of his book *Two Treatises of Government*. The *Second Treatise* was a defence of the Glorious Revolution (1688) in which the absolute Catholic King James II was overthrown by Parliamentarians in favour of the protestant King William III. The *Second Treatise* can be seen as a counterargument to Thomas Hobbes (1588-1679) *Leviathan* (1651) in which Hobbes promotes an absolutist government as the solution to protect the people from civil war ('a war of all against all'), which he views as the state of nature. Locke had a different view on the state of nature. His state of nature is that of law and reason, which would prevent people 'to harm another in his life, liberty and or property'. But since there is no impartial authority to judge, the state of nature is neither stable nor safe for individual humans.

This makes him [man] willing to quit a condition, which, however free, is full of fears and continual dangers: and it is not without reason, that he seeks out, and is willing to join in society with others, who are already united, or have a mind to unite, for the mutual preservation of their lives, liberties and estates, which I call by the general name, property.

Thus in order to protect private life, liberty, and/or property men is willing to unite in a society under a social contract. Since the protection of these liberties is the main reason for collaboration, a ruler of this society should not infringe on those liberties. To make certain that the ruler's sole purpose is to protect those private rights, he is tied to the social contract. When he breaks it, the people are entitled to revolt and overthrow the government.⁷⁸ So Locke argues that the state has to protect private life and individual rights, and has no right to harm them, or only on those conditions agreed under a social contract. This is a crucial principle of liberalism as well as liberal democracy. From the mid-eighteenth century the thoughts of Locke gained new popularity. Most significantly was the adoption of his thinking on private individual rights ('unalienable rights [...] Life, Liberty and the pursuit of Happiness') in the American Declaration of Independence in 1776 (see also section two).⁷⁹ Thereafter Locke's writings also became influential

⁷⁸ Locke 1988.

⁷⁹ Glenn 2003, 17, 18.

in the rising debates on the abolishment of the slave trade and up until the contemporary era his work is a point of reference when it comes to discussions about individual rights, including privacy.

1.3.3 Jeremy Bentham's Panopticon (1791)

Bentham's *Panopticon* from 1791 is a classic text for it has served since its publication as a metaphor for what will happen when privacy is disrespected. In the twentieth century it became the symbol for modern state's obsession with control, total oversight, and social engineering. His text is the original source for contemporary references to the panopticon and the surveillance state.

What was the panopticon? The philosopher, utilitarianist, and social reformer Jeremy Bentham (1748-1831) presented the panopticon as a proposal for social reform. The panopticon is a circular institutional building for constant surveillance, most famously in the form of a prison. The name panopticon refers to *Panoptes*, the giant watchman with hundred eyes from Greek mythology. The basic idea is that a group of people, such as prisoners, could be (cost) effectively supervised by a single watchman from a watchtower in the middle. The watchtower should be built in such a way that prisoners could not see if the guard was actually looking at them, but a rightly designed tower guaranteed that they *could* be watched at every moment. In the words of Bentham: 'I mean, the apparent omnipresence of the inspector (...) combined with the extreme facility of his real presence.'⁸⁰ Since it would be impossible for prisoners to verify if the watchman was watching them, Bentham predicted that all prisoners would act as if they were being watched constantly. This was 'a new mode of obtaining power of mind over mind, in a quantity hitherto without example'. Bentham had high hopes for his new inspection model: 'Morals reformed – health preserved – industry invigorated – instruction diffused – public burdens lightened – Economy seated, as it were, upon a rock – the Gordian Knot of the poor-law not cut, but untied – all by a simple idea in Architecture!'⁸¹ The panopticon is perhaps most famous as an architectural design for a prison. Not least because Bentham ordered sketches and unfruitfully tried to persuade the British government for years to build a prison according to his plans. But Bentham saw the panopticon foremost as a tool of management for any institution. His brother would build a panoptical factory, and Bentham

⁸⁰ Bentham 2011; Vincent 2016, 53.

⁸¹ Bentham 2011.

saw its surveillance capacities fitting for schools, hospitals, mad-houses, and the like.⁸²

Bentham's description of continuous surveillance has been very influential and shaped the thinking of later scholars. It is clearly visible in the constant surveillance through telescreens by the totalitarian state in George Orwell's *Nineteen Eighty-Four* (1949).⁸³ In 1975 the idea of the panopticon gained influence once again thanks to the work of the French philosopher Michel Foucault. In his book *Discipline and Punish: the Birth of the Prison* (1975) he used 'panopticism' as a metaphor for modern disciplinary societies.⁸⁴ According to Foucault the panopticon principle is not only used for prisons, but the mechanism of constant surveillance is a mechanism that controls modern social life. Power structures need docile bodies which are ideal to work in factories, create order in military regiments, or strengthen discipline in schools. In order to instil docility, the constant threat of surveillance is needed to discipline society to behave by its rules and norms. This requires a particular structure, that of the panopticon. More recently, for example during the Edward Snowden-affair on the global surveillance programmes of the National Security Agency, the panopticon was often referred to in order to emphasize how in today's digital age oversight and monitoring are organized.⁸⁵

1.3.4 Samuel Warren and Louis Brandeis, 'The Right to Privacy' (1890)

Samuel Warren and Louis Brandeis' 'The Right to Privacy' (1890) shows a change. 'Publicity which had meant the opposite of secrecy', for men like Jeremy Bentham a century ago, 'had come to mean the attention of the press (the opposite of privacy)', as Jill Lepore argues.⁸⁶ Moreover, the text is a modern plea why there should be a right to be let alone, worthy of protection by law. 'The Right to Privacy' article of Samuel Warren and Louis Brandeis is therefore a classic.⁸⁷ The article has been called 'the single most influential article on privacy' and 'the most profound development in privacy law'.⁸⁸ They clearly responded to the changes of their time. Explicitly Warren and Brandeis referred to the 'recent inventions and business methods', such as new communication technology and mass media – the circulation of newspapers rose by about

82 Vincent 2016, 52-54.

83 Orwell 2008.

84 Foucault 1991.

85 For example: Rule 2013, A27; Simpson 2013; Julian Sanchez 2014.

86 Lepore 2013, 10.

87 Warren and Brandeis 1890, 193.

88 Solove 2006, 10; Vincent 2016, 76.

1000% between 1850 and 1890⁸⁹ – which threatened personal privacy. Warren, through his family fortune a member of the Boston commercial elite, was furious when he found out that in his view intimate details of his family were publicly shared without his consent: the *Boston Saturday Evening Gazette* had infiltrated into the wedding breakfast of Warren's daughter and published about it.⁹⁰ 'The press is overstepping in every direction the obvious bounds of propriety and decency' and 'Gossip had become trade', the authors wrote.⁹¹ Warren and Brandeis largely build their argument on *Prince Albert v. Strange* (1849).⁹² They wanted to protect 'the sacred precincts of private and domestic life'. But the Warren and Brandeis article also reflects a change in how privacy should be understood. At issue was a family occasion but their plea was a rejection of *any* form of personal infiltration without clear consent and a legal basis, as the article held a plea for 'the right to be let alone'. Moreover, it was a response to the modern world in which 'solitude and privacy have become more essential to the individual'.⁹³ Privacy, especially the right to be let alone, was not a universal right, but necessary in a modern era of mass media, and so was its legal protection, they argued. The influence of the article of Warren and Brandeis is further discussed in the chapter on privacy and law.

1.4 Traditional debates and dominant schools

Although privacy has never been a major theme in the work of historians, when we analyse historiography (the history of history writing) we can distinguish several influential works and three significant methodological streams of history writing on privacy: the history of law, social history, and cultural history.

1.4.1 The first wave: History of Law (legal history)

Privacy was first explored by historians of law. This field is mainly practised in faculties of law for the purpose of the development and interpretation of the law.⁹⁴ Due to the nature of common law, this discipline is less well established or developed in continental Europe. One should keep in mind that law history has a different purpose than much of the work of mainstream

89 Solove 2006, 10.

90 Glancy 1979.

91 Warren and Brandeis 1890, 193.

92 Post 1991, 647.

93 Vincent 2016, 77, 78.

94 For an oversight of the methods and historiography of the history of law: Ibbetson, 2003.

historians. The latter tend to work in faculties of arts or of humanities. As a result of working separately, there is not much cooperation or interaction between the mainstream historians and legal historians. The field of history of law is however a productive field. Newer work on the history of privacy can for example be found in David Garrow's monumental work on the historic roots of the judicial struggle for abortion rights which were concluded in *Roe v. Wade* (1973).⁹⁵ Another subdomain of this discipline is less interested in the jurisprudence, but focuses more on the context in which law or interpretations came about. A good example is the article of Dorothy Glancy on 'the invention of privacy law' in which she researches the context of *boulevardism* to explain why Warren and Brandeis wrote their article.⁹⁶

1.4.2 The second wave: Social History (1960s)

Privacy as a field of study found its way into the academic discipline of mainstream history through the field of social history. It was David Flaherty who became a professor of law and history at the University of Western Ontario and wrote the first monograph which had the history of privacy as its main subject. His *Privacy in Colonial New England* (1972) can be seen as a bridge between the fields of the history of law and social history. The book originated from a subsidy of the Association of the Bar of New York City to assess the growing concern about privacy at the end of the 1960s. Flaherty's book starts from his belief that privacy is not a modern notion but a basic law of biology and ecology. He tried to prove this by turning to puritanism in colonial New England, because Puritans in the 1960s also had an ambivalent attitude towards privacy. He showed how individual New Englanders valued privacy and how with the growth of the colony and its economy privacy became more valued as houses could grow larger and settlements got more scattered. Moreover, he stressed that the control and authority over the personal life waned by the eighteenth century.

The enthusiasm to study the history of the daily life of ordinary people which were heretofore underrepresented in history, is typical for social history which became the main discipline of history writing in the 1970s. The rise of this type of social history can be understood as a democratization process within history writing, which mirrored the democratization process in society. The discipline used a wide range of methods, from microhistory focusing on small examples to the *Annales* approach focusing on long-term

⁹⁵ Garrow 1994.

⁹⁶ Glancy 1979.

changes in mentalities. Perhaps the best-known example of an *Annales* historian who wrote on the private life and on privacy is Phillipe Ariès from France. He wrote *Centuries of Childhood: A Social History on Family Life* (1962), in which privacy is discussed as one of the explanations for changes in the treatment of children as children.⁹⁷ He was also one of the editors of the five volume-series *A History of Private Life* (1985-1987).⁹⁸ In this history on daily life from antiquity to the present, the emergence of privacy is one of the themes. Diana Webbs' history of privacy and solitude in the Middle Ages is a recent example of the *Annales* school.⁹⁹

1.4.3 The third wave: New Cultural History (1990s-present)

David Vincent wrote several books on the history of different aspects of privacy, such as secrecy and the public discourse on privacy in the 19th century.¹⁰⁰ His *Privacy: a Short History* is the only monograph that covers the history of privacy from the Middle Ages up until the present era.¹⁰¹ Although it is not a world history as it focuses primarily on the history of privacy in Great Britain, his approach and use of sources is exemplary for a cultural history approach of privacy. Starting from accounts of medieval court cases on watching windows of neighbours, Vincent leads us through the history of privacy. Vincent's main argument is that history of privacy is not linear. Notions of privacy have differed throughout history. Changes in daily life and the development of the house and bedrooms as private places are a central theme of his book.

Vincent is a social historian by training but his work is clearly influenced by New Cultural History. The New Cultural History approach emphasizes the importance of studying language and other social and cultural utterances traditionally neglected by historians, with the help of (insights from) language, narrative, and discourse theory. The influence of New Cultural History is very visible in David's book on the history of privacy: *I Hope I Don't Intrude*. The book discusses the changing concept of privacy by studying nineteenth-century plays. The book title is the catch phrase of Paul Pry, the main character and eponymous of a very popular play of the time. Moreover, the work of Fawcett on celebrity and privacy in the eighteenth century fits this category.¹⁰² Cultural-history studies on privacy primarily look at privacy

97 Ariès 1962.

98 Especially in the third volume: Ariès 2003.

99 Webb 2007.

100 Vincent 2008; Vincent 2015.

101 Vincent 2016.

102 Fawcett 2016.

in terms of reputation and domestic life. In the last years cultural histories used artefacts or personal letters as main sources to study privacy in the early modern era (ca. 1500-1750), such as is the case in Cecile M. Jagodzinski *Privacy and Print: Reading and Writing in Seventeenth-century England* (1999) or Lena Cowen Orlin's *Locating Privacy in Tudor London* (2010).¹⁰³

Cultural history has also become the main method for political historians. This becomes visible in the recent works on privacy, modernity, and the development of the modern state. Examples are Higgs', Moran's, and Frost's work on secrecy and the state, focusing on the endeavours of the British and the United States Government in keeping official secrets secret.¹⁰⁴ Kathrin Levitan's *A Cultural History of the Census* shows how society responded to the introduction and use of census data. The book is a good example of how cultural history has entered the field of the history of privacy in relation with policy history.¹⁰⁵ Not only privacy policies and the 'politics of privacy' are now more commonly researched, but also the private aspects of elites and their struggle to maintain their privacy. Examples are the recent autobiography of Jeroen van Zanten of the Dutch King William II or popular histories on the private aspects of royalty such as Michael Paterson's *A Brief History of the Private Life of Elizabeth II*.¹⁰⁶

To sum up, the historiography of privacy has broadened in recent decades. It changed from a purely legal history into something to be understood in the context of social, political, and technological change that has had an effect on both elites and common people as social and cultural historians have stressed. Moreover, in the recent period there is a tendency to not only see privacy as a history of emerging individualism, Protestantism and liberalism, like in historical studies on the Renaissance. Privacy is now more often researched in relation with housing, modern state formation, globalization, and technological and communication innovation, for example in the recent book of David Vincent. This has led to the result that by now privacy is treated as a more complex and paradoxical phenomenon, worthy of studying on its own terms. In the section below, we will further elaborate on how changes in the field of history writing have affected how historians understand and deal with privacy.

¹⁰³ Jagodzinski 1999; 2010.

¹⁰⁴ Higgs 2003; Moran 2013; Frost 2017.

¹⁰⁵ Levitan 2011.

¹⁰⁶ Van Zanten 2014; Paterson 2012.

1.5 New challenges and topical discussions

In 1980, David Flaherty was one of the first to draw attention to the responsibilities of the historian for the privacy of his research objects. In contrast to neighbouring fields such as the social sciences and law, historians were late to give attention to privacy of sources. The main reason is that historians were long occupied with writing about people who no longer lived.¹⁰⁷ This is clearly related to the professionalization of history since the nineteenth century. Central in this professionalization process was the belief that historians could best study histories of people, events, or cultures that had come to an end. This assertion, often summarized in Hegel's quote: 'the owl of Minerva spreads its wings only with the falling of dusk' was a guiding principle for historians. This has changed since the 1970s, through the emergence of the field of contemporary history or *Zeitgeschichte*. As a result, historians started researching and writing about processes that still last and about people still alive.¹⁰⁸ Moreover, especially in the American context, historians became more conscious of privacy because they increasingly made use of the Freedom of Information Act to retrieve sensitive government information for historical research.¹⁰⁹

The emergence of the relatively new field of oral history has had an impact as well. One of the goals of oral history was (and is) to give voice to the voiceless in history, by interviewing people in length about their daily lives or about traumatic experiences.¹¹⁰ Unlike much of the ethnographic research in the social sciences, oral history interviews are typically not anonymous and they are being collected to be archived and thus are being kept publicly available for further research.¹¹¹ Asking for consent has become part of professional oral history research. The adoption of consent forms started in the United States where oral history has a stronger developed tradition of interviewing elitist groups who were concerned with controlling their views. By 1994, the Oral History Association had adopted ethical guidelines in which the interviewee got options to put restrictions on the accessibility of the information, to restrict access to the archives, or to request for anonymity and confidentiality.¹¹²

¹⁰⁷ Flaherty 1980.

¹⁰⁸ Palmowski and Spohr Readman 2011.

¹⁰⁹ Flaherty 1980, 421.

¹¹⁰ Keulen and Kroeze 2012; Thompson 2000.

¹¹¹ Thompson 2000.

¹¹² Boschma and Mychajlunow 2003.

Changing copyright laws have influenced the fields of (oral) history and archiving in recent decades. Up until 1989 it was typical to have an informal understanding about consent in the social sciences and oral history research in the United Kingdom. Access to archives was generally an informal issue between researcher and archivist. Nowadays archives have to ensure that copyright is transferred to the archive or a licence is needed which approves broad public access while leaving the copyright with the producer of the archived material or interviewee.¹¹³ Consent forms and copyrights may be an official solution to make consent and privacy more transparent, but this is not the end of the matter. These legal solutions lead to new dilemmas and problems for historians, as is discussed in the edited volume *Doing Recent History*.¹¹⁴ Laura Clark Brown and Nancy Kaiser describe how archives struggle with interpreting privacy laws in the archival context. At first archives attempted to develop policies for sensitive materials but this proved to be unworkable as every new set of material brought its own unprecedented challenges. Now archives are inclined to turning to 'legal loopholes' in order to work around highly specialized privacy laws if they attain school records or hospital archives.¹¹⁵ More information on privacy and archives can be found in the chapter on archival studies in this book.

In the same volume Gail Drakes sheds light on privacy laws and intellectual property rights. She argues how the expansion of copyright laws in the United States since the Copyright Act of 1976 has hindered historians to use newsreels or TV programmes as their content is privately owned or stored behind pay walls. Another example is the use of copyright and the 'right to publicity' laws to maintain, protect, or polish the image of a family member posthumously. The use of these laws has restricted the access to historical information on certain individuals, even after their death.¹¹⁶

The rise of women's history and the subject of privilege in the field of history in recent decades has had another impact on historians working on privacy-related topics. Feminists have pointed at the politics behind private-public distinctions and have criticized dominant notions of non-interference and privacy. What is considered private and privacy by someone, may be an urgent public matter for another. They also have made historians aware of power relations in interviewing. The historian Joan Sangster for example has argued that it is impossible for an interviewer to be detached

113 Thompson 2000.

114 Potter and Romano 2012.

115 Brown and Kaiser 2012.

116 Drakes 2012, 85.

and objective about the (interview) subject. She has also questioned the democratic assumptions of oral history by pointing out that differences in status, background, gender, or class between interviewer and interviewee could lead to ‘unequal, intrusive and potentially exploitative relationships’.¹¹⁷ For example, who decides what is ‘true’ when the interviewee, referring to his or her memory, and the historian, referring to historical knowledge, clash on the meaning of a subject? This debate has since widened and plays an eminent role in Afro-American History, postcolonial history, and the history of underprivileged groups. For example, was the collection of human remains by physio-anthropologists, the production of photos of naked indigenous people by Westerners and their exhibition in colonial museums, even up until today, a breach of privacy? And how can it be redressed?¹¹⁸

These considerations have also influenced archiving. In a recent publication, Michelle Moravec, a scholar on women’s history and digital history, asks herself the question how we should treat ethics, consent and privacy of interviewees in paper magazines with small circulations amongst likeminded readers, which are now being digitized and made freely accessible to the world.¹¹⁹ One recent reaction to this debate is that archives are starting to adopt restrictions to full access for the general public. They grant only full access to specific communities to ‘their’ materials.¹²⁰

The lack of structural archiving of online information is one of the most important recent challenges. Whereas primary sources, printed newspapers, books, and many oral history collections are collected and categorized by national and local archives or libraries, websites are typically not. The Dutch situation is exemplary and not an exception. Here, every online published article of the largest news organization of the Netherlands, the publicly financed NOS, from before 2010 has disappeared. Hundreds of thousands of online articles from the largest Dutch newspaper *De Telegraaf* and the complete online archive of free newspapers (*Spits, De Pers, DAG.nl*) suffered the same fate.¹²¹ The problem is related to continuous updates of digital online search, storage, and visual tools that will also continue in the future. Adobe has already announced to stop supporting the video tool *Flash* by 2020, threatening the accessibility of millions of online movie clips from individuals and organizations. The same is true for Data Management

117 Sangster 1994.

118 Sysling 2017.

119 Moravec 2017, 186.

120 Brown 2016.

121 Sedee 2018.

Systems (DMS) of organizations including the government. By updating or replacing software older DMS versions cannot be read, making digital (governmental) archives completely inaccessible, which hinders the democratic control and legitimation of decision-making.¹²²

The lack of a structural approach and the unavailability of past online data to the larger public makes online data accessibility highly dependent on arbitrary decision-making and to those who have the means and interests to dig up lost information. From an academic and democratic perspective this is not desirable. For the near future historians and archivists have to rethink this dilemma, also in relation to the 'right to be forgotten' adopted in the EU.¹²³ The newly proclaimed 'right to refuse to be researched' which questions whether 'overstudied others' – such as native communities, ghettoized and orientalized communities – benefit themselves from the ethics and usefulness from social science research,¹²⁴ will cause further complications but nonetheless makes debating those issues inevitable.

1.6 Conclusion

The history of privacy shows that privacy has been understood as and in relation to seclusion, individual rights and protection of personal information which requires protection from the law and the government. Secondly, the history of privacy shows that debates on privacy can be understood as fears about the impact of new information technology, government interference in personal life and the rise of the so-called surveillance state. Moreover, to explain and understand how privacy was understood in specific time periods, the treatment of privacy as a context-dependent phenomenon is needed.

As the meaning of privacy is context-dependent, opportunities for and threats towards privacy are highly related to broader societal developments. Of these broader developments, several have been distinguished and discussed in this chapter but we briefly sum them up here. First, changing morals, cultural and religious ideas about the individual, family, household, and 'natural' relationships have had an effect on privacy. Second, privacy has been influenced throughout history by political changes on the national

122 For a Dutch example: paragraph 7.2.2: Kamerstuk II 2014/15 33 606, nr. 4. Hoofdrapport Parlementaire Enquête Woningcorporaties.

123 EU, Judgment of the Court in Case C131/12 'the right to be forgotten' (13 May 2014).

124 Tuck and Yang 2014.

and international level, especially the rise of the idea of individual rights, including privacy, and the acceptance of an individual sphere which the state, society, and legal system should respect and protect from internal and external oppression. The development of liberal-democracy – with individual freedom and the non-interference principle as its core values – and the internationalization of human rights in the past decades have had a big impact on the politics of privacy, and the history of privacy. Finally, technological change, especially in the field of infrastructure, media, and communication, from the printing press up to Internet, have had a great impact on privacy matters and will continue to do so.

These changing technological, political, cultural and judicial shifts are not only worthy of historical research but have had an impact on the profession and the ethics of the historian and historical research as well. With the development of digital databases and online sources new technical possibilities have emerged but these have given rise to new debates on how to deal with privacy and accessibility. Debates about the essence of privacy will continue and thus make privacy a fruitful object of study for historians but also a matter of ethical reflection for citizens, politicians, and historians alike. Clearly, privacy is not only a contextual and relational issue but also a paradoxical one.

Further reading

David Vincent's *Privacy: a Short History* (2016) is the only available monograph on the history of privacy and provides an introduction to privacy in history. Other suggestions for further reading are mentioned in Chapter 4 and throughout the text. Alternatively, one could check the references.

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